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No. 425

In the Supreme Court of the United States

OCTOBER TERM, 1950

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HIGHLAND PARK MANUFACTURING COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Fourth Circuit entered on September 2, 1950 (R. 147-152), setting aside an order issued by the Board against the Highland Park Manufacturing Company (R. 1-7).

OPINIONS BELOW

The opinion of the Court of Appeals (R. 147-152) is reported at 184 F. 2d 98. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 1-35) are reported at 84 NLRB 744.

JURISDICTION

The judgment of the Court of Appeals was entered on September 2, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Sections 9 (f), (g), and (h) of the National Labor Relations Act, as amended, provide that the Board shall not issue a complaint upon a charge filed by a labor organization unless that labor organization "and any national or international labor organization of which it is an affiliate or constituent unit" have filed the reports and affidavits prescribed in those Sections.

The question presented is whether the Board properly issued a complaint upon a charge filed by an international union affiliated with the Congress of Industrial Organizations at a time when the officers of the international had filed the reports and affidavits prescribed by Sections 9 (f), (g) and (h) of the National Labor Relations Act, as amended, but the officers of the C. I. O. had not.

STATUTES INVOLVED

The statutory provisions principally involved are Sections 9 (f), (g), and (h) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, Secs. 151, *et seq.*). The per-

tinent provisions are set out in the Appendix, *infra*, pp. 10-13.

STATEMENT

From June to September, 1946, the Textile Workers Union of America, an affiliate of the Congress of Industrial Organizations, repeatedly asked respondent to recognize and bargain with it as representative of a majority of the employees in an appropriate unit in respondent's plant in Rock Hill, South Carolina (R. 14, 21-22, 38-41, 47, 55, 72, 83-88). As a consequence of respondent's continued refusal to bargain, the Textile Workers, on September 13, 1946, filed an unfair labor practice charge with the Board (R. 8).

The Board issued its complaint on January 10, 1949, and the customary proceedings were thereafter held before a Trial Examiner and before the Board (R. 1, 8, 9).

In the proceedings before the Trial Examiner and before the Board, respondent, in addition to contending that the Textile Workers did not represent a majority of the employees, urged that the complaint should be dismissed because the Congress of Industrial Organizations, with which the Textile Workers was affiliated, had not complied with the filing requirements of Sections 9 (f), (g), and (h) of the amended Act, which was enacted in June 1947, after the filing of the Textile Workers' charge but before the issuance of the complaint (R. 2, n. 3, 10). The Trial Examiner and the Board rejected this contention, the Board citing

Northern Virginia Broadcasters, 75 NLRB 11, in which it had stated its reasons for concluding that parent federations such as the American Federation of Labor and the Congress of Industrial Organizations were normally not included in the phrase "national or international labor organization" as used in Sections 9 (f), (g), and (h).[1] The Board likewise rejected respondent's contentions that on the merits it had not violated the Act (R. 2-5). Accordingly, on June 29, 1949, the Board issued its order requiring respondent to cease and desist from the unfair labor practices found and to bargain with the Textile Workers upon the latter's request (R. 5-6).

The Court of Appeals, without discussing the merits of the refusal to bargain, set aside the Board's order on the ground that "the Board proceeded upon an erroneous theory of law" in issuing its complaint upon a charge filed by the Textile Workers "when that union at the time was affiliated with the C. I. O., whose officers had not then complied with the statute requiring the filing of noncommunist affidavits" (R. 148). The court

[1] The Board in *American Optical Co.*, 81 NLRB 453, distinguished the situation which exists where a charge is filed by a local, national, or international labor organization which is affiliated with a parent federation from the situation which exists where the charge is filed by an "organizing committee" or "federal labor union" which is under the direct control of a parent federation. In the latter situation, the Board pointed out, the parent federation itself acts as a "national or international labor organization." See also National Labor Relations Board, *Thirteenth Annual Report*, Government Printing Office, 1949, p. 24.

noted that its decision was in accord with that of the Fifth Circuit in *National Labor Relations Board* v. *Postex Cotton Mills*, 181 F. 2d 919, and in conflict with that of the District of Columbia Circuit in *West Texas Utilities Company* v. *National Labor Relations Board*, 184 F. 2d 233.

REASONS FOR GRANTING THE WRIT

1. In holding that it is a condition to the issuance of a complaint upon charges filed by a national or international labor organization that the parent federation also file the non-communist affidavits prescribed in Section 9 (h), the court below acknowledged that its views were in conflict with those expressed by the Court of Appeals for the District of Columbia Circuit in *West Texas Utilities Company* v. *National Labor Relations Board*, 184 F. 2d 233. In the *West Texas* case, the court expressly approved the Board's holding that parent federations under such circumstances are not included within the phrase "national or international labor organization" as used in Section 9 (h),[2] and that consequently officers of the AFL are not required to file the affidavits prescribed therein.[3]

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[2] The same phrase is used in Sections 9 (f) and (g), companion subsections to 9 (h). All three subsections are involved in the instant case, although only Section 9 (h) is discussed in the opinion of the court below.

[3] In the *West Texas* case, the officers of the parent federation had filed the affidavits prescribed by Section 9 (h) by the time the Board issued its complaint, although they had not

In enforcing the Board's order in the *West Texas* case, the court noted that under the decisions of this Court "great weight" should be accorded the interpretation of the administrative agency. The court also observed that the Board's interpretation apparently had been approved by the Congressional committee created to report upon the functioning of the Act. Relying upon this Court's ruling that the purpose of Section 9 (h) was to prevent communist-led unions from obstructing collective bargaining by calling politically motivated strikes (*American Communications Assn.* v. *Douds*, 339 U. S. 382), the court, in the *West Texas* case, held the parent federations to be outside the scope of that Section because they, unlike local, national, and international unions, do not engage in collective bargaining or call strikes. The court further supported its conclusion by reference to leading labor economists who have recognized the distinction between national and international unions and "parent federations," and by an examination of the legislative history of Section 9 (h), which establishes that both the Congress and the President understood the Section to apply to nationals and internationals but not to parent federations. The court, in the *West Texas* case, thus expressly approved the Board's decision in

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done so at the time of the refusal to bargain, the unfair labor practice in that case. Both the Board and the court in the *West Texas* case rested their decisions on the ground that Section 9 (h) did not apply to parent federations.

Northern Virginia Broadcasters, 75 NLRB 11, and noted its disagreement with *National Labor Relations Board* v. *Postex Cotton Mills*, 181 F. 2d 919 (C. A. 5).

The court below, however, upon its assumption that the CIO is "unquestionably" a national labor organization (R. 148), approved and followed the *Postex* decision and expressly rejected "the argument to the contrary" in the *West Texas* decision (R. 151), as well as the Board's ruling in *Northern Virginia Broadcasters*.

2. The decision below raises a question of major importance in the administration of the Act. Although the two parent federations have now filed the documents prescribed in Sections 9 (f), (g), and (h),[4] there is no assurance that they will continue to file the annual reports and affidavits required therein. Under the decision below, any such cessation of compliance would automatically suspend the Board's power to issue complaints, investigate questions of representation, or entertain petitions for a union-shop election where the charge or petition was filed by a local or international labor organization affiliated with that parent federation. This consideration led the court in the *West Texas*

[4] The AFL filed the prescribed documents on November 7, 1947, and the CIO on December 22, 1949. Compliance with Sections 9 (f), (g), and (h) was presumably effected by the parent federations to obtain the privilege of invoking the facilities of the Board in those cases in which they perform the functions of a national or international labor organization. See *American Optical Company*, 81 NLRB 453.

case to refer to "the calamitous effect on the entire economy of non-compliance by a single federation officer" should the statute be construed to require such compliance (184 F. 2d at 238). Furthermore, under such circumstances, the decision below would thwart the entire congressional purpose of spotlighting Communists in the labor movement, for no incentive to compliance by officers of internationals, nationals, and locals would remain if non-compliance by a single federation officer deprived all its affiliates of recourse to the Board.

The decision below also casts serious doubt on the validity of the Board's order in fourteen cases now pending before the courts of appeals, in which the Board's complaint issued at a time when the parent federation of which the charging union was an affiliate had not complied with the filing requirements of Sections 9 (f), (g), and (h). Twenty similar cases have been referred to the General Counsel of the Board with instructions to seek enforcement of the Board's order therein, although petitions to enforce these orders have not yet been filed. The validity of these orders is, of course, similarly jeopardized by the decision below

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

GEORGE J. BOTT,
General Counsel,
National Labor Relations Board.

DECEMBER 1950.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, 151, *et seq.*), are as follows:

* * * * *

SEC. 9. * * *

* * * * *

"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded

$5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

"(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of

any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

"(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees,

raised by a labor organization under subsection (e) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits."

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